

Notice of Allowability

Application No.

09/911,107

Examiner

Jason Proctor

Applicant(s)

CUTLIP, ROBERT RUSSELL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to March 17, 2005.
2. ☒ The allowed claim(s) is/are 1-30.
3. ☒ The drawings filed on 23 July 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Handwritten signature: CUTLIP
Handwritten text: W. T. CUTLIP
Primary Examiner
2123
TC 2100

DETAILED ACTION

Claims 1-30 have been rejected in office action dated January 25, 2005. Applicant has amended claims 1, 2, 6, 9, 11, 12, 13, 16, 19, 21, 23, 26, and 29 in response dated March 17, 2005. Claims 1-30 have been submitted for reconsideration in light of Applicants' amendments and arguments. Claims 1-30 have been allowed.

Response to Applicants' Remarks

Previous IDS

The Examiner thanks Applicant for submitting the inadvertently omitted page from published reference GB2341955A. The Examiner has considered the information shown in the omitted page including the references cited thereon.

Claim Objections

The Examiner thanks Applicant for amending claims 2, 12, 19, and 29 to correct the typographical errors indicated in the previous office action. The previous objections to the claims have been withdrawn.

Rejections under 35 U.S.C. § 101

The Examiner acknowledges that Applicant does not concur with the propriety of the rejection of claims 1-5, 10, 11-15, 20, 21-25, and 30 but has amended the claim language of at least the independent claims such that they recite a tangible result and

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are directed to statutory subject matter. The previous rejections of these claims under 35 U.S.C. § 101 as being directed to nonstatutory subject matter have been withdrawn.

Rejections under 35 U.S.C. § 112

The Examiner thanks Applicant for arguments that clarify the meaning of the claim language in claims 1-30. Applicant has cited support for these arguments in the specification. The previous rejections of claims 1-30 under 35 U.S.C. § 112 as being vague and indefinite are withdrawn.

Rejections under 35 U.S.C. § 103

Applicant is correct that US Patent No. 6,278,966 to Howard et al. (Howard) qualifies as prior art under 35 U.S.C. § 102(e), commonly assigned to International Business Machines, Corporation, and does not qualify as prior art pursuant to 35 U.S.C. § 103(c) for obviousness purposes. The rejection of claims 1-30 under 35 U.S.C. § 103 as unpatentable over Howard is withdrawn.

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Timothy J. O'Sullivan on May 24, 2005.

The application has been amended as follows: The sentence beginning at page 7, lines 13-16 is amended to read: "As will be appreciated by those of skill in the art, the operating system **252** may be any operating system suitable for use with a data processing system, such as OS/2®, AIX®, or System/390® from International Business Machines Corporation, Armonk, NY; Windows® 95, Windows® 98, or Windows® 2000 from Microsoft Corporation, Redmond, WA; UNIX®, or Linux®."

Examiner's Statements of Reasons for Allowance

Claims 1-30 are allowable as a search of the prior art fails to reveal or render obvious at least the combinations recited in independent claims 1, 11, and 21. Specifically, the allowable subject matter resides in the use of Ramsey Numbers to filter simulated network traffic so as to provide a first predefined number of related messages and a second predefined number of unrelated messages. The closest prior art teaches simulation network traffic wherein the simulated traffic is recreated using scripts that are based on historical data or created by capturing actual users' behavior. While the definition of a Ramsey Number is well known in the mathematical arts related to graph theory or networks, a search of the prior art fails to reveal or render obvious the use of known Ramsey Numbers to filter simulated network traffic as recited at least be independent claims 1, 11, and 21. A search of the prior art fails to expressly provide motivation to combine Ramsey Numbers with filtering simulated network traffic primarily

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because Ramsey Numbers possess no attributes directly applicable to a traffic filtering application and the prior art in network traffic simulation is directed to generating the desired traffic rather than filtering random traffic and discarding the undesirable traffic. Motivation does not always have to come from within the prior art references. However, in the instant case, taking into consideration the nature of this art and the skill level required, one would need some impetus and direction to modify the individual teachings to result in the integrated steps as recited in the claims.

The prior art made of record, shown on the form P.T.O. 892 supplied in the previous office action, is the closest art uncovered during the examination process and is considered pertinent to Applicant's invention. Though considered pertinent, the art is not anticipatory and does not render obvious the claimed system as recited in claims 1, 11, and 21.

Of the prior art made of record, the teachings considered by the examiner to be closest to Applicant's invention are found in US Patent No. 6,278,966 to Howard et al. Howard teaches generation of simulated network traffic via the use of scripts. Howard provides ample teaching for the generation of these scripts, but ultimately the simulated traffic is generated according to the scripts and therefore suitable for use. Howard never contemplates a filtering means for the generated traffic, let alone using Ramsey Numbers to configure the filter's operation. Instead, Applicants' claimed invention randomly generates the simulated traffic and filters that traffic using the known Ramsey Numbers to provide predefined numbers of related and unrelated messages.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Proctor whose telephone number is (571) 272-3713. The examiner can normally be reached on 8:30 am-4:30 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin J Teska can be reached on (571) 272-3716. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3713.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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CEP
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Apr. 21, 2009
TC 2100
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